

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ANDREW DOE

PLAINTIFF

V.

CIVIL ACTION NO. 3:18-CV-138-DPJ-FKB

THE UNIVERSITY OF MISSISSIPPI, ET AL.

DEFENDANTS

ORDER

Defendants seek an order clarifying whether the Court's Order [236] disposing of the parties' summary-judgment motions constituted a Rule 54(b) final judgment as to Doe's procedural-due-process claim. Mot. [240]. Doe believes that it did and has sought attorney's fees as a prevailing party under 42 U.S.C. § 1988. The Court ordered expedited briefing on Defendants' motion because their appeal clock would soon expire if the Order [236] constituted a final judgment. It did not.

The Court begins with Federal Rule of Civil Procedure 54(b):

When an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims . . . does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims

Tracking that text, the Court's summary-judgment Order never expressly "direct[ed] entry of a final judgment" as to the procedural-due-process claim. *Id.* Nor is there language in the Order reflecting the Court's "unmistakable intent to enter a partial final judgment under Rule 54(b)." *Kelly v. Lee's Old Fashioned Hamburgers, Inc.*, 908 F.2d 1218, 1220 (5th Cir. 1990) (en banc). That was not the Court's intent, so the Order remains interlocutory. Defendants' motion to clarify [240] is granted.

SO ORDERED AND ADJUDGED this the 4th day of October, 2023.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE